APPEAL NO. 031226
FILED JUNE 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 15, 2003. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the initial quarter, August 5 through November 3, 1998; (2) that the claimant is not entitled to SIBs for the 15th quarter, January 30 through April 30, 2002, the 16th quarter, May 1 through July 30, 2002, the 17th quarter, July 31 through October 29, 2002, the 18th quarter, October 30, 2002, through January 28, 2003, or the 19th quarter, January 29 through April 29, 2003; (3) that the respondent (carrier) is relieved of liability for SIBs for the 15th through the 18th quarters due to the claimant's failure to timely file an Application for [SIBs] (TWCC-52) for those quarters; and (4) that the carrier is not relieved of liability for SIBs for the 19th quarter because the claimant timely filed a TWCC-52 for that quarter. The claimant appealed, disputing the determinations of nonentitlement to SIBs and the determination that the carrier is relieved of liability for SIBs for the 15th through the 18th quarters because of his failure to timely file TWCC-52s for the relevant quarters. The carrier responded, urging affirmance.

DECISION

Affirmed.

It was undisputed that the claimant sustained a compensable injury on _____. The parties stipulated that the claimant reached maximum medical improvement on April 8, 1997, with a 23% impairment rating and that the claimant did not elect to commute any portion of his impairment income benefits. The parties agreed that the 1st quarter came under the "old" SIBs rules, those in effect prior to January 31, 1999, and the remaining quarters in dispute came under the "new" SIBs rules, specifically the amendments which were effective November 28, 1999. The claimant asserts entitlement to SIBs for the quarters in dispute based on a total inability to work. The claimant additionally argues that he is entitled to SIBs for the 15th and 16th quarters because during the relevant qualifying periods he attended classes at a university. It is undisputed that the claimant did not look for work.

With respect to the initial quarter, the burden of establishing no ability to work at all is "firmly on the claimant," Texas Workers' Compensation Commission Appeal No. 941382, decided November 28, 1994, and we have also stressed the need for medical evidence to affirmatively show an inability to work. Texas Workers' Compensation Commission Appeal No. 960123, decided March 4, 1996. *See also* Texas Workers' Compensation Commission Appeal No. 941332, decided November 17, 1994. A claimed inability to work is to be "judged against employment generally, not just the previous job where the injury occurred." Texas Workers' Compensation Commission Appeal No. 941334, decided November 18, 1994. Whether a claimant has no ability to

work at all is essentially a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 941154, decided October 10, 1994.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102), which apply to the remaining quarters in dispute. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

We note that there is no narrative report from a doctor which specifically explains how the injury caused a total inability to work during any period of the qualifying period (*See* Rule 130.102(d)(4)), and that the hearing officer did not find a total inability to work for any portion of the qualifying periods in dispute. The hearing officer specifically found that the claimant had an ability to work during the filing period of the initial quarter and that during the qualifying periods for the 15th through the 19th quarters the claimant possessed his pre-injury ability to work.

There is sufficient evidence to support the challenged finding that the claimant was not enrolled in and did not satisfactorily participate in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission. There was no documentary evidence in the record to show that the claimant participated in a program. The claimant did testify that he attended college classes during the qualifying periods of the 15th and 16th quarters, however, the claimant testified that the TRC told him they were unable to help him.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision of non-entitlement to SIBs for the relevant quarters is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Rule 130.105 pertains to the failure to timely file a TWCC-52. Based upon the evidence before her, which included the TWCC-52s for the 15th through the 18th quarters, the hearing officer determined that the carrier is relieved of liability for SIBs for the 15th through the 18th quarters. The TWCC-52s at issue were all dated by the claimant after the expiration of the relevant qualifying periods. We conclude that the hearing officer's determinations that the carrier is relieved of liability for the 15th through the18th quarters are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Robert W. Potts
Appeals Judge